

BEST AVAILABLE COPY*Docket No. 1442.004C
U.S. Serial No. 10/700,284***REMARKS**

Without acquiescing to the propriety of the rejections in the Office Action dated December 9, 2004, claims 1, 3 and 20 have been amended. Entry of these amendments, reconsideration of the application, and allowance of all claims pending herein is respectfully requested in view of the remarks below. Claims 1-20 are now pending.

Initially, Applicant gratefully acknowledges the allowance of claims 8 and 9, and the conditional allowance of claims 6 and 7 upon them being rewritten in independent form to include all the limitations of the base claim and any intervening claims. Application respectfully defers rewriting claims 6 and 7 in view of the remarks below.

Claim Rejections Under 35 U.S.C. § 112:

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. In particular, the Office Action objects to the limitation "said first area and said second area" as not having sufficient antecedent basis. This claim has been amended to change "said first area and said second area" to "said first portion of the person and said second portion of the person" This change is believed to have sufficient antecedent basis in claim 1 and therefore this rejection is believed to be overcome.

Double Patenting:

Claims 1, 2 and 5 stand rejected under the judicially created Doctrine of Obviousness-type Double Patenting over claim 1 of U.S. Patent No. 6,662,384. A Terminal Disclaimer is included herewith over this patent, and thus this rejection is believed to be overcome.

Claims 10-20 stand rejected under the judicially created Doctrine of Obviousness-type Double Patenting over claims 1-20 of U.S. Patent No. 6,675,404. A Terminal Disclaimer is included herewith over this patent, and thus this rejection is believed to be overcome.

Claim Rejections Under 35 U.S.C. § 102:

Claims 1-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bishop (U.S. Patent No. 3,941,154).

Amended claim 1 of the present application recites, *inter alia*, a hydrotherapy spa which includes an individual seating location configured to receive a person. A plurality of ports is located within the individual seating location and includes a first port positioned to discharge fluid toward a first portion of the person within the individual seating location and a second port position to discharge fluid toward a

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second portion of the person within the individual seating location. At least one flow control device is configured for fluid communication with a fluid source. The at least one flow control device is configured to direct the fluid to the first port in response to the first pipe or the second pipe being moved to a first position. The at least one flow control device is configured to direct the fluid to the second port in response to the first pipe or the second pipe being moved to a second position.

Bishop discloses a swimming pool system having circulating pipes and conduits in positions readily accessible for inspection and maintenance. Inlets may be rotatable to direct jets of water downwardly into the pool or upwardly to provide a plurality of fountains. A control valve has longitudinally spaced apart peripherally arranged rows of openings of different areas and configurations, which are positioned to register with inlet conduit sections. The valve element is continuously rotated thereby varying the distribution of water and varying the fountains of water produced.

However, Bishop does not disclose an individual seating location, a plurality of ports located within such an individual seating location, nor a first port thereof positioned to discharge fluid toward a first portion of a person and a second port thereof positioned to discharge fluid toward a second portion of the person. Further, there is no disclosure of a first flow control device which is configured to direct fluid to the first port in response to a first pipe or second pipe of the flow control device being moved to a first position, nor the flow control device being configured to direct fluid to the second port in response to the first pipe or the second pipe being moved to a second position. Instead, Bishop merely discloses outlets utilized to return water to a pool or to produce fountains from such a pool, but there is no disclosure of ports being positioned such that fluid is discharged toward a first portion of a person within an individual seating location in response to movement of a flow control device and the fluid being discharged toward a second portion of the person in response to movement of the flow control device to a second position. Accordingly, because all the elements (e.g., a first port within an individual seating location being positioned to discharge fluid toward a first portion of a person and a second port within the individual seating location being positioned to discharge fluid toward a second portion of a person, and a flow control device being configured to direct the fluid to the first port in response to a first pipe or a second pipe being moved to a first position and being configured to direct the fluid to the second port in response to the first pipe or the second pipe being moved to a second position) of claim 1 of the present application are not identically disclosed by Bishop, this claim cannot be anticipated thereby. Thus, claim 1 is believed to be allowable along with the dependent claims which are believed to be allowable for the same reasons and for own additional features.

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Claim 20:

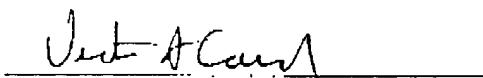
Claim 20 has been amended to correct a typographical error.

CONCLUSION

It is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Examiner is invited to telephone the undersigned attorney at the telephone number provided.

Respectfully submitted,



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Enclosures: Terminal Disclaimer over U.S. Patent No. 6,662,384
Terminal Disclaimer over U.S. Patent No. 6,675,404

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